

Microsoft Purchase Order Terms & Conditions ("PO")

1. **Acceptance and Effect.** This PO is between the Microsoft entity issuing the Purchase Order ("Microsoft") and the supplier identified herein ("Supplier") and covers:
 - a. **Goods:** the purchase of software and tangible goods
 - b. **Services:** the purchase/ordering of services
 - c. **Deliverables:** all intellectual property ("IP") or other work product developed by Supplier (or a Subcontractor) for Microsoft as part of delivery of Goods or Services are "work made for hire" for Microsoft as that term is defined under applicable copyright law

This PO is effective upon Supplier's commencement of performance or the date of Supplier's signature below, whichever is earlier. Except as set forth in Section 2 below, Supplier's acceptance of this PO is expressly limited to these terms and conditions without counterproposal.

2. **Relationship to Other Agreements.** The terms and conditions of this PO are the complete and binding agreement between Microsoft and Supplier except:
 - a. If the parties mutually executed an agreement, including a Master Supplier Services Agreement, which is effective on the date of this PO and applies to the Goods and/or Services ordered with this PO, and/or that agreement applies to the relationship of the parties governed by this PO, then the provisions of such agreement are incorporated. If conflict arises between this PO and such agreement, the terms of such agreement will apply. For purposes of this PO, online terms or agreements that Microsoft accepts to login or access Services, such as a software as a service or platform, is not an agreement that has been "mutually executed" and will not replace, supplement or amend the terms in this PO in any way.
 - b. If multiple agreements with similar or contradictory provisions could apply to this PO, the parties agree the terms most favorable to Microsoft will apply, unless the result would be unreasonable, unconscionable or prohibited by law.
 - c. Except as stated above in this Section 2, and other than changes described in Section 8 and the Termination provisions in Section 12, additional or different terms (for example, online terms or agreements) will not supersede this PO unless the parties mutually execute a written document.
3. **Packing, Shipment and Returns of Goods or Deliverables.** Unless specifically provided in this PO:
 - a. **Packing.**
 - (1) Price based on weight will include net weight only;
 - (2) Supplier will not charge Microsoft for packaging or pre-shipping costs, such as boxing, crating, handling damage, drayage, or storage.
 - b. **Shipping.**
 - (1) Supplier will mark all containers with necessary handling and shipping information, PO number(s), date of shipment, and names of the consignee and consignor;
 - (2) An itemized invoice and packing list, and other documentation required for domestic or international transit, regulatory clearance or identification of the Goods or Deliverables will accompany each shipment;
 - (3) Microsoft will only pay for the quantity received, not to exceed the maximum quantity ordered;
 - (4) Microsoft or its agent will hold over-shipments at Supplier's risk and expense for a reasonable time awaiting Supplier's shipping instructions;
 - (5) Microsoft will not be charged for shipping or delivery costs;
 - (6) Unless otherwise agreed, Goods and Deliverables will be delivered on the 10th day after the PO date:
 - i. FOB to the Microsoft designated delivery location if the Goods and Deliverables originate in the same jurisdiction as the Microsoft designated delivery location; or
 - ii. DDP (Incoterms 2010) to the Microsoft designated delivery location for cross border delivery of Goods and Deliverables to the Microsoft designated delivery location; and
 - (7) Supplier will bear all risk of loss, damage, or destruction to the Goods or Deliverable, in whole or in part, occurring before final acceptance by Microsoft at the designated delivery location. Microsoft is responsible for any loss caused by the gross negligence of its employees before acceptance.

- c. Returns. Supplier will bear the expense of return shipping charges for over-shipped quantities or rejected items.

4. Invoices.

- a. To the extent that electronic invoicing is available, Supplier will follow that process. MS Invoice <https://einvoice.microsoft.com> is a web-based application, provided by Microsoft to its payees, which allows payees to submit electronic invoices directly to Microsoft. The MS Invoice tool supports electronic invoice submissions on a one-on-one basis or via mass upload if there are multiple invoices. Payee should contact Microsoft Accounts Payable Help Desk at <https://www.microsoft.com/en-us/procurement/contracting-apsupport.aspx> and provide a valid justification if unable to submit invoices via this process, as an exception Microsoft will provide an alternative invoice submission process. Invoice must contain the following information: PO number, item number, description of item, quantities, unit prices, extended totals, packing slip number, shipping, ship to city and state, taxes, and any other information reasonably required by Microsoft. Supplier will not charge Microsoft for researching, reporting on or correcting any errors relating to its invoices. Microsoft may provide electronic invoicing functionality to Supplier through the use of a third-party invoicing service provider. In those circumstances, Supplier authorizes the electronic invoicing provider to receive Supplier's invoice data not yet constituting an original invoice and subsequently to apply an electronic signature to the invoice data to issue electronic invoices "in the name and on behalf of" Supplier.
- b. Microsoft may dispute any invoice by providing oral or written notice or partial payment. Microsoft will make commercially reasonable efforts to notify Supplier in writing of any disputed amount within 45 days of receiving the applicable invoice. Neither failing to provide notice nor payment of an invoice is a waiver of any claim or right.

5. Payment Terms / Cash Discounts / Offset / Expenses.

- a. After Microsoft accepts the Goods or Services and receives a correct and undisputed invoice (the "Create Date"), Microsoft will release payment by net 45 days, following the Create Date.
- b. Microsoft is not obligated to pay any invoice received from Supplier more than 120 days after Microsoft accepts the Goods or Services.
- c. Payment of an invoice will not constitute acceptance under this PO, and is subject to adjustment for errors, shortages, defects or other failure of Supplier to meet the requirements of this PO.
- d. Microsoft may set-off amounts owed to Microsoft against an amount Microsoft owes Supplier or Supplier's affiliated companies. Microsoft will provide notice to Supplier within a reasonable time after the setoff.
- e. Unless otherwise agreed, Supplier is responsible for all expenses incurred providing the Goods or Services and performing under this PO.

6. Taxes.

- a. Except as otherwise provided below, the amounts to be paid by Microsoft to Supplier do not include taxes. Microsoft is not liable for any taxes that Supplier is legally obligated to pay, including net income or gross receipts taxes, franchise taxes, and property taxes. Microsoft will pay Supplier any sales, use or value added taxes it owes due to this PO and which the law requires Supplier to collect from Microsoft.
- b. If Microsoft provides Supplier a valid exemption certificate, Supplier will not collect the taxes covered by such certificate.
- c. Supplier will indemnify and hold Microsoft harmless from any claims, costs (including reasonable attorneys' fees) and liabilities related to Supplier's taxes.
- d. If the law requires Microsoft to withhold taxes from payments to Supplier, Microsoft may withhold those taxes and pay them to the appropriate taxing authority. Microsoft will deliver to Supplier an official receipt for such taxes. Microsoft will use reasonable efforts to minimize any taxes withheld to the extent allowed by law.

7. Inspection and Acceptance.

- a. The Goods and Services must meet the standards and specifications in this PO. Microsoft may cancel this PO if Supplier fails to comply with the PO standards and specifications.
- b. All Goods and Services will be subject to Microsoft's inspection and testing, at any time and place, including the period of manufacture and before final acceptance. If Microsoft inspects or tests at Supplier's premises, Supplier, without additional charge, will provide all reasonable facilities and assistance for the safety and convenience of Microsoft's inspectors. No inspection or testing done or not done before final inspection and

acceptance will relieve the Supplier from responsibility for defects or for other failure to meet the requirements of this PO.

- c. If any item provided under this PO is defective in materials or workmanship or not in conformity with the requirements, then Microsoft may reject it without correction, require its correction within a specified time, accept it with an adjustment in price, or return it to Supplier for full credit. When Microsoft provides notice to Supplier, Supplier will promptly replace or correct, at their expense, any item rejected or requiring correction. If, after Microsoft's request, Supplier fails to promptly replace or correct a defective item within the delivery schedule, Microsoft may, at its sole option, (i) replace or correct such item and charge the cost to Supplier, (ii) without further notice terminate this PO for default, return the rejected item to Supplier at Supplier's expense and Supplier will promptly refund any amounts paid by Microsoft for the returned item or (iii) require a reduction in price.
 - d. Notwithstanding any prior inspections or payments made, all Goods and Services will be subject to final inspection and acceptance at Microsoft's designated location within a reasonable time after delivery or performance. Records of all inspection work will be complete and available to Microsoft during performance of this PO and for such further period as Microsoft determines.
8. **Changes.** Microsoft may suspend Supplier's performance, increase or decrease the ordered quantities, or make changes for Microsoft's reasonable business needs (each, a "Change Order"), by written notice to Supplier, including via e-mail, and without any notice to Supplier sureties, subcontractors or assignees. Unless mutually agreed, a Change Order does not apply to change the Goods and Services timely and fully delivered before the date of the Change Order. If any change causes an increase or decrease in the cost of, or the time required for, Supplier's performance, an equitable adjustment may be made in the price or delivery schedule or both, if Microsoft agrees to such adjustment in writing.
9. **Tools and Equipment.** All tools, equipment or materials acquired by Supplier for use in providing the Goods and Services, which have been furnished to, paid for by or charged against Microsoft, including specifications, drawings, tools, dies, molds, fixtures, patterns, hobs, electrodes, punches, artwork, screens, tapes, templates, special test equipment, gauges, content, data, and software, will remain or become Microsoft's property, treated as confidential information, and delivered in good condition, normal wear and tear excepted, by Supplier to Microsoft's designated delivery location per Section 3, immediately upon demand and without cost to Microsoft. Supplier warrants the item(s) and information will not be used for any work or production of any materials or parts other than for Microsoft, without Microsoft's prior written permission.
10. **Ownership and use of the parties' respective IP.**
- a. Each party will own and retain all rights to its pre-existing IP and any IP developed outside of the Goods and Services under this PO.
 - b. Solely as to Deliverables: Microsoft will own all Deliverables, including all IP rights, all media in any format, hardware, and other tangible materials created by Supplier while delivering the Services. Any Supplier work which is a written or customized product or report related to, or to be used in, a Deliverable is regarded as IP.
 - c. If Deliverables do not qualify as a work made for hire, Supplier assigns to Microsoft all right, title, and interest in and to the Deliverables, including all IP rights. Supplier waives all moral rights in Deliverables.
 - d. If Supplier uses any Supplier or third-party IP in any Good or Service, Supplier will continue to own Supplier's IP. Supplier will grant Microsoft a worldwide, nonexclusive, perpetual, irrevocable, royalty-free, fully paid up right and license, under all current and future IP, to use Supplier's and third-party IP consistent with Microsoft's ownership interests under this Section 10.
 - e. Microsoft IP.
 - (1) Supplier may obtain "Microsoft Materials" meaning tangible or intangible materials (including hardware, software, source code, documentation, met methodologies, know how, processes, techniques, ideas, concepts, technologies, and data) provided by or on behalf of Microsoft or any of its affiliated companies required for Supplier to perform the Services. Microsoft Materials include any modifications to, or derivative works of, the foregoing materials, the trademarks and any data entered into any Supplier database as part of the Services. Microsoft Materials do not include Microsoft products obtained by Supplier outside of and unrelated to this PO.
 - (2) Microsoft grants Supplier a nonexclusive, nonsublicensable (except to approved subcontractors), revocable license to copy, use and distribute any Microsoft Materials.
 - (3) Microsoft retains all other interest in Microsoft Materials and related IP. Supplier has no right to sublicense Microsoft Materials except to approved subcontractors as required to perform the delivery

of Goods and Services. If the Microsoft Materials come with a separate license, the terms of that license will also apply.

- (4) Supplier will take reasonable precautions to protect and ensure against loss or damage, theft, or disappearance of Microsoft Materials.
 - (5) PO Supplier will promptly return any Microsoft Materials upon expiration or termination.
 - (6) Regarding Supplier's use of Microsoft Materials:
 - i. Supplier will not modify, reverse engineer, decompile, or disassemble Microsoft Materials except as allowed by Microsoft;
 - ii. Supplier will leave in place, and not alter or obscure proprietary notices and licenses contained in Microsoft Materials;
 - iii. Microsoft is not obligated to provide technical support, maintenance or updates for Microsoft Materials;
 - iv. All Microsoft Materials are provided "as-is" without warranty; and
 - v. Supplier assumes the risk of loss, damage, unauthorized access or use, or theft or disappearance of Microsoft Materials in Supplier's (or subcontractor's) care, custody or control.
- f. Grant of Rights IP.
- (1) License, Access and Use. Supplier grants to Microsoft and its affiliated companies (including their employees, contractors, consultants, outsourced workers, and interns engaged by Microsoft or any of its affiliated companies to perform services) (i) a worldwide, irrevocable, nonexclusive, perpetual, paid-up and royalty free license for any Goods that include software or other IP not subject to a separate license (including installed applications) and (ii) a worldwide, nonexclusive, unlimited, paid-up and royalty free right to access and use, during the term, Services (where applicable), in each case for Microsoft's business purposes. The license allows Microsoft to use such software, IP and Services in connection with Goods. Microsoft may transfer this license if it transfers the Goods to a Microsoft affiliated company, a Microsoft third-party service provider, or a successor owner by sale or lease.
 - (2) Pass through warranties and indemnities. Supplier assigns and passes through to Microsoft all of the third-party manufacturers' and licensors' warranties and indemnities for the Goods.
- g. Title to the Goods (other than software) will pass from Supplier to Microsoft on final acceptance.

11. Representations and Warranties. Supplier represents and warrants that:

- a. it has full rights and authority to enter into and perform according to this PO and its performance will not violate any agreement or obligation between it and any third party;
- b. services will be performed professionally and be of high grade, nature and quality;
- c. it will provide to Microsoft all Goods and Services free from (i) any defects in design, workmanship and materials, (ii) any liability for royalties, and (iii) any mechanic's liens or any other statutory lien or security interest or encumbrance;
- d. The Goods, Services, Deliverables and any Supplier IP or third-party IP provided to Microsoft under this PO:
 - (1) Are not governed, in whole or in part, by an Excluded License. "Excluded License" means any software license that requires as a condition of use, modification and/or distribution, that the software or other software combined and/or distributed with it be (a) disclosed or distributed in source code form; (b) licensed to make derivative works; or (c) redistributable at no charge; and
 - (2) Will not be subject to license terms that require any Microsoft IP, product, service, or any Supplier IP, or third-party IP licensed to Microsoft, or documentation which incorporates or is derived from the Deliverables, to be licensed or shared with any third party;
- e. The Goods, Services, Deliverables and any Supplier IP or third-party IP provided to Microsoft under this PO will not:
 - (1) To the best of Supplier's knowledge, infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party; or

18. **Subcontracting.** Supplier will not subcontract with any third party to furnish any Goods or Services without Microsoft's prior written consent.
19. **Indemnification.** Supplier will defend, indemnify and hold harmless Microsoft and Microsoft affiliates companies against all claims, demands, loss, costs, damages, and actions for (a) actual or alleged infringements of any third-party IP or other proprietary rights, which arise from the Goods and Services provided under this PO, (b) any claim that, if true, would constitute a breach of Section 13 or any Supplier warranty contained herein, (c) any act or omission of or failure to comply with applicable laws, rules or regulations by Supplier or Supplier's agents, employees, or subcontractors, (d) any breach of confidentiality obligations, (e) the negligent or willful acts or omissions of Supplier or its subcontractors, which results in any bodily injury or death to any person or loss, disappearance or damage to tangible or intangible property, and (f) any claims of its employees, affiliated companies or subcontractors regardless of the basis, including, but not limited to, the payment of settlements, judgments, and reasonable attorneys' fees.
20. **Insurance.**
- a. Supplier will maintain the following insurance and minimum limits (or the equivalent limits in applicable local currency): (i) commercial general liability insurance limits of \$1,000,000 US per occurrence for personal injury and/or property damage (including Automobile Liability), (ii) Employers Liability insurance with minimum limits of \$500,000 US per occurrence, and (iii) statutory limits for any claims under any applicable US Worker's Compensation and Occupational Disease Acts or other similar laws or regulations that are applicable to acts of Supplier and/or its agents, employees, or subcontractors under this PO.
 - b. If the provision of Goods or Services under this PO causes Professional liability/errors & omissions liability, Supplier will maintain insurance coverage for such liability with policy limits of not less than \$2,000,000 US, each claim, or the equivalent limits in applicable local currency. The insurance will include coverage for infringement of third-party proprietary rights (for example trademark and copyright) if such coverage is reasonably commercially available. Supplier will maintain either active policy coverage or an extended reporting period providing coverage for claims first made and reported to the insurance company within 12 months after termination or expiration of this PO.
 - c. Upon request, Supplier will provide Microsoft with proof of the required insurance coverage. If Microsoft reasonably determines that Supplier's coverage is not adequate, Supplier will promptly buy additional coverage and notify Microsoft in writing.
21. **Non-Disclosure of Confidential Matters.** If the parties have entered into a standard Microsoft Non-Disclosure Agreement, the terms of such agreement will apply to and be incorporated in this PO and all terms and conditions of this PO and Microsoft Materials will be deemed Confidential Information. If the parties have not entered into a standard Microsoft Non-Disclosure Agreement, then Supplier agrees that during the term of this PO and for 5 years thereafter, Supplier will hold in strictest confidence, and will not use or disclose to any third party, any Microsoft Confidential Information. The term "Microsoft Confidential Information" means all non-public information that Microsoft or an affiliated company designates, either in writing or orally, as confidential, or which, under the circumstances of disclosure ought to be treated as confidential. Microsoft Confidential Information includes:
- a. The terms and conditions of this PO;
 - b. Released or unreleased Microsoft software or hardware products;
 - c. Marketing or promotion of any Microsoft product;
 - d. Business policies or practices of Microsoft;
 - e. Customers or suppliers of Microsoft;
 - f. Microsoft Materials or any information provided by Microsoft under this PO or obtained or created by Supplier while providing the Goods or Services; or
 - g. Information received from others that Microsoft must treat as confidential.

If Supplier has questions regarding what comprises Microsoft Confidential Information, Supplier will consult Microsoft. Microsoft Confidential Information will not include information known to Supplier before Microsoft's disclosure to Supplier, or information that becomes publicly available through no fault of Supplier.

22. **Audit.** During the term of this PO and for 4 years after, Supplier agrees to keep all usual and proper records and books of account and all usual and proper entries related to its costs and expenses pertinent to this PO. During the above referenced period, Microsoft may audit and/or inspect the applicable records and facilities to verify statements or invoices issued by Supplier and confirm Supplier's compliance with this PO. Any such audit will be conducted by Microsoft corporate internal audit personnel or by a certified public accountant firm selected by Microsoft. Supplier agrees to provide Microsoft's designated audit or inspection team reasonable access to the Supplier records and

facilities. If the auditors determine that Microsoft overpaid Supplier, Supplier will reimburse Microsoft for any such overcharge. Microsoft will bear the expense of its auditors or inspection team. However, if the audit shows Supplier overcharged Microsoft by 5% or more during such audit period, Supplier will reimburse Microsoft for such expenses.

23. **Assignments.** No right or obligation under this PO (including the right to receive monies due) will be assigned without the prior written consent of Microsoft. Any assignment without such consent will be void. Microsoft may assign its rights under this PO.
24. **Notice of Labor Disputes.** Whenever an actual or potential labor dispute delays or threatens to delay the timely performance of this PO, Supplier will immediately notify Microsoft in writing of such dispute and furnish all relevant details. Supplier will include a provision identical to the above in each subcontract and, immediately upon receipt of such notice, give written notice to Microsoft.
25. **Patent License.** Notwithstanding other conditions stated herein, if Supplier fails in performance according to the terms of this PO, Supplier, as part of the consideration for this PO and without further cost to Microsoft, automatically grants to Microsoft an irrevocable, non-exclusive, royalty-free right and license to use, sell, manufacture, and cause to be manufactured any and all products, which embody any and all inventions and discoveries made, conceived, or actually reduced to practice by or on behalf of Supplier in connection with a Deliverable under this PO.
26. **Applicable Law.** For Goods and Services provided to Microsoft in the United States, this PO will be governed by and construed under the laws of the State of Washington. The parties consent to exclusive jurisdiction and venue in a court in the State of Washington. For all other Goods and Services provided to Microsoft, the laws, jurisdiction and venue of Microsoft's physical location will govern this PO.
27. **Publicity; Use of Trademarks.** Supplier will not issue press releases or other publicity related to Supplier's relationship with Microsoft or this PO without prior written approval from Microsoft. If written approval is granted, Supplier may only use Trademarks for Services and Deliverables in compliance with the guidelines at <http://www.microsoft.com/en-us/legal/intellectualproperty/Trademarks/Usage/default.aspx>.
28. **Severability, URLs.** If a court of competent jurisdiction determines that any PO provision is illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect. URLs also refer to successors, localizations, and information or resources linked from within websites at those URLs.
29. **Survival.** The provisions of this PO which, by their terms, require performance after the termination or expiration or have application to events that may occur after the termination or expiration of this PO, will survive the termination or expiration of this PO. All indemnity obligations will be deemed to survive the termination or expiration of this PO.